

LAW OFFICE OF
DAVID J. WEINSOFF
138 Ridgeway Avenue
Fairfax, California 94930
tel. 415-460-9760
david@weinsofflaw.com

Via Certified Mailing – Return Receipt

September 7, 2020

Brian C. Malk, Trustee
The Brian C. Malk Trust
415 S. Cedros Avenue, Suite 240
Solana Beach, CA 92075-1978

Brian C. Malk, Owner
Nancy Malk, Owner
Managing Agent
Malk Family Vineyards
5850 Silverado Trail
Napa, CA 94558-9418

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Malk, Ms. Malk, and Managing Agent:

NOTICE OF ALLEGED VIOLATIONS

On July 30, 2020, this office sent you a Certified “Letter of Inquiry” (attached) which you received on August 5, 2020, informing you that our client California River Watch (“River Watch”) was unable to confirm that Malk Family Vineyards and The Brian C. Malk Trust (“Winery”) has obtained and is in compliance with a permit from the State of California to discharge stormwater from the Winery site. The Letter of Inquiry requested that you contact us within ten (10) days of receipt of the Letter to discuss this matter and provide documentation of compliance. We have received no communication from the Winery as of the date of this correspondence.

As a result, this Notice is provided on behalf of River Watch in regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring at the Winery located at 5850 Silverado Trail in Napa, California. Notice is being sent to you as the responsible owners, operators, and managers of the Winery and the associated industrial operations taking place on the real property.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge complies with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p). CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES permitting program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”), amending it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and comply with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under CWA § 505(a) of the Act. Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred and continue to occur at the Winery. Consequently, Malk Family Vineyards and The Brian C. Malk Trust are placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Winery for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with applicable water quality standards set forth in the California Toxics Rule (“CTR”), and the San Francisco Bay Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated.

Any industrial facility classified under Standard Industrial Code (“SIC”) 2084 discharging industrial-related stormwater or non-stormwater from its site must obtain coverage under an NPDES permit. River Watch notices the Winery, an SIC 2084 facility, of ongoing violations of CWA § 402: (1) through its failure to apply for, obtain, and comply with the terms and conditions of an individual NPDES permit; or (2) through its failure to submit a Notice of Intent (“NOI”) seeking coverage under the General Permit (or seeking exemption from coverage). Compliance with the terms and conditions of either permit would address the discharges of stormwater and

non-stormwater relating to industrial services and operations taking place at the Winery. River Watch, following its investigation and consultation with experts, contends the Winery has failed to conduct its industrial operations at the Winery with coverage under, and in compliance with, a CWA permit that would eliminate the threat of pollution from those industrial operations.

2. The Activity Alleged to Constitute a Violation.

Full compliance with the mandates of the permitting requirements under the CWA is not a mere statutory and regulatory exercise. The lands in and surrounding the Winery produce a harvest of unparalleled bounty drawing acclaim worldwide. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of Napa County landowners.

A review of publicly available information and eyewitness reports reveals that industrial operations at the Winery are conducted both indoors and outdoors where they are subject to rain events. Because there is no compliance by the Winery with standard CWA permit requirements, there is no stormwater sampling, monitoring, or implementation of Best Management Practices that would control the discharge of pollutants and ensure there is no unlawful discharge of pollutants from the Winery.

3. The Person or Persons Responsible for the Alleged Violation.

The entities responsible for the alleged violations Malk Family Vineyards and The Brian C. Malk Trust as the owners and operators of the Winery and real property underlying the Winery.

4. The Location of the Alleged Violation.

The location of the various violations is the permanent address of the Winery at 5850 Silverado Trail in Napa, California, including the tributaries to and waters of the Napa River – waters of the United States.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is from September 1, 2015 to the present. This Notice includes all violations which occur after the range of dates covered by this Notice up to and including the end of trial. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 South Main Street, #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface water and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota,

flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com .

REMEDIAL MEASURES REQUESTED

River Watch believes that application to the RWQCB for an individual NPDES permit or the filing of an NOI seeking coverage under the General Permit, followed by strict compliance with the terms and conditions imposed, is necessary in order to bring the Winery into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment surrounding the Winery.

CONCLUSION

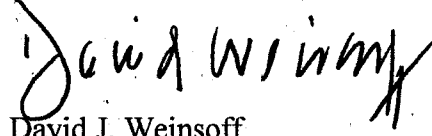
The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community and may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Winery's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$55,800.00 per day/per violation pursuant to CWA § 309(d) and 505, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch encourages the Winery to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to the Winery. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Winery is in compliance with the strict terms and conditions of the CWA relating to industrial operations taking place at the

Winery, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



David J. Weinsoff

DW:lm

Service List

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-0003

John W. Busterud, Regional Administrator
U.S. Environmental Protection Agency
Pacific Southwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105-3920

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100